

AMENDED IN ASSEMBLY MARCH 14, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1709**

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**Introduced by Assembly Member Mitchell**  
**(Coauthors: Assembly Members Alejo, Ammiano, and Wieckowski)**

February 15, 2012

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An act to amend Sections 701, 702, 704, and 706 of, and to add Section 679.5 to, the Welfare and Institutions Code, relating to juveniles.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1709, as amended, Mitchell. Juveniles: jury trial.

**Existing**

(1) *Existing* law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. The juvenile court must adjudicate a petition to declare a detained minor a ward of the court within 15 days after the petition is filed. Existing law, contained in 2 initiative statutes, commonly known as the Three Strikes law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply. Existing law requires that if a defendant has 2 or more prior violent or serious felony convictions, the term for the current felony conviction shall be an indeterminate term of imprisonment in the state prison for life with a minimum term to be served, as specified. Under certain circumstances, a juvenile adjudication constitutes a violent or serious felony conviction under those provisions.

This bill would ~~provide~~ *require* that a youth who is 16 years of age or older at the time of the commission of an offense that could be used as a future felony conviction under the Three Strikes law ~~is~~ *be* entitled to a jury trial in the juvenile court. ~~Under this bill,~~ *The bill also would*

*require that the jury trial would proceed in the same manner as a jury trial in criminal court. This bill would provide that the right to a jury trial does not affect the right of a detained minor to adjudication of the petition to declare him or her a ward of the court within 15 days of the filing of the petition. This bill would also make conforming changes.*

*(2) Existing law authorizes a juvenile court to temporarily commit a ward of the court to a diagnostic and treatment center of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, for up to 90 days if the ward is otherwise eligible for commitment and the court concludes that the commitment would be in the ward's best interest, including in cases in which the minor has been adjudged a ward of the court due to habitual disobedience or truancy or due to the violation of any state or federal law or local ordinance defining crime, as specified. Existing law requires the Chief of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, to forward the minor's diagnosis and treatment recommendations to the court within that 90-day period.*

*This bill would limit these provisions to minors who have been adjudicated as wards of the court for violating any state or federal law or local ordinance defining a crime, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 679.5 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 679.5. (a) A youth who is 16 years of age or older at the time
- 4 of the commission of an offense, which, upon admission or
- 5 adjudication, could be used as a future felony conviction under
- 6 paragraph (3) of subdivision (d) of Section 667 of the Penal Code
- 7 or under paragraph (3) of subdivision (b) of Section 1170.12 of
- 8 the Penal Code, shall be entitled to a jury trial.
- 9 (b) A jury trial under this section shall proceed as provided in
- 10 Chapter 7 (commencing with Section 1041) and Chapter 8
- 11 (commencing with Section 1046) of Title 6 of, and Title 7
- 12 (commencing with Section 1065) of, Part 2 of the Penal Code.
- 13 (c) This section does not affect the right of a detained youth
- 14 under Section 657 to a trial within 15 days of the filing of the
- 15 petition to declare the youth a ward of the court.

1 SEC. 2. Section 701 of the Welfare and Institutions Code is  
2 amended to read:

3 701. At the hearing, the court or jury as provided by Section  
4 679.5 shall consider only the question *of* whether the minor is a  
5 person described by Section 300, 601, or 602. The admission and  
6 exclusion of evidence shall be pursuant to the rules of evidence  
7 established by the Evidence Code and by judicial decision. Proof  
8 beyond a reasonable doubt supported by evidence, legally  
9 admissible in the trial of criminal cases, must be adduced to support  
10 a finding that the minor is a person described by Section 602, and  
11 a preponderance of evidence, legally admissible in the trial of civil  
12 cases, must be adduced to support a finding that the minor is a  
13 person described by Section 300 or 601. When it appears that the  
14 minor has made an extrajudicial admission or confession and denies  
15 the same at the hearing, the court may continue the hearing for not  
16 to exceed seven days to enable the prosecuting attorney to subpoena  
17 witnesses to attend the hearing to prove the allegations of the  
18 petition. If the minor is not represented by counsel at the hearing,  
19 it shall be deemed that objections that could have been made to  
20 the evidence were made.

21 SEC. 3. Section 702 of the Welfare and Institutions Code is  
22 amended to read:

23 702. After hearing the evidence, the court or jury as provided  
24 by Section 679.5 shall make a finding, noted in the minutes of the  
25 court, whether or not the minor is a person described by Section  
26 300, 601, or 602. If the court or jury finds that the minor is not  
27 such a person, the court shall order that the petition be dismissed  
28 and the minor be discharged from any detention or restriction  
29 theretofore ordered. If the court or jury finds that the minor is such  
30 a person, the court shall make and enter those findings and order  
31 accordingly, and shall then proceed to hear evidence on the  
32 question of the proper disposition to be made of the minor. Prior  
33 to doing so, the court may continue the hearing, if necessary, to  
34 receive the social study of the probation officer, to refer the minor  
35 to a juvenile justice community resource program as defined in  
36 Article 5.2 (commencing with Section 1784) of Chapter 1 of  
37 Division 2.5, or to receive other evidence on its own motion or the  
38 motion of a parent or guardian for not to exceed 10 judicial days  
39 if the minor is detained during the continuance. If the minor is not  
40 detained, it may continue the hearing to a date not later than 30

1 days after the date of filing of the petition. The court may, for good  
2 cause shown, continue the hearing for an additional 15 days, if the  
3 minor is not detained. The court may make an order for detention  
4 of the minor or his or her release from detention, during the period  
5 of the continuance, as is appropriate.

6 If the minor is found to have committed an offense which would  
7 in the case of an adult be punishable alternatively as a felony or a  
8 misdemeanor, the court shall declare the offense to be a  
9 misdemeanor or felony.

10 SEC. 4. Section 704 of the Welfare and Institutions Code is  
11 amended to read:

12 704. (a) If the court or jury as provided by Section 679.5 has  
13 determined that a minor is a person described by Section 602, ~~or~~  
14 ~~if the court has determined that a minor is a person described by~~  
15 ~~Section 601 and a supplemental petition for commitment of the~~  
16 ~~minor to the Department of Corrections and Rehabilitation,~~  
17 ~~Division of Juvenile Facilities has been filed pursuant to Section~~  
18 ~~777,~~ and the minor is otherwise eligible for commitment to the  
19 Department of Corrections and Rehabilitation, Division of Juvenile  
20 Facilities, the court, if it concludes that a disposition of the case  
21 in the best interest of the minor requires that observation and  
22 diagnosis be made at a diagnostic and treatment center of the  
23 Department of Corrections and Rehabilitation, Division of Juvenile  
24 Facilities, may continue the hearing and order that the minor be  
25 placed temporarily in a center for a period not to exceed 90 days,  
26 with the further provision in the order that the ~~Director~~ *Chief* of  
27 the Department of Corrections and Rehabilitation, Division of  
28 Juvenile Facilities report to the court ~~its~~ *the* diagnosis and *his or*  
29 *her* recommendations concerning the minor within the 90-day  
30 period.

31 (b) The Chief of the Department of Corrections and  
32 Rehabilitation, Division of Juvenile Facilities shall, within the 90  
33 days, cause the minor to be observed and examined and shall  
34 forward to the court his diagnosis and recommendation concerning  
35 that minor's future care, supervision, and treatment.

36 (c) The Department of Corrections and Rehabilitation, Division  
37 of Juvenile Facilities shall accept the person if there is in effect a  
38 contract made pursuant to Section 1752.1 and if it believes that  
39 the person can be materially benefited by such diagnostic and  
40 treatment services, and if the Chief of the Department of

1 Corrections and Rehabilitation, Division of Juvenile Facilities  
2 certifies that staff and institutions are available. No such person  
3 shall be transported to any facility under the jurisdiction of the  
4 Department of Corrections and Rehabilitation, Division of Juvenile  
5 Facilities until the chief has notified the referring court of the place  
6 to which that person is to be transported and the time at which he  
7 can be received.

8 (d) The probation officer of the county in which an order is  
9 made placing a minor in a diagnostic and treatment center pursuant  
10 to this section, or any other peace officer designated by the court,  
11 shall execute the order placing the minor in the center or returning  
12 him therefrom to the court. The expense of the probation officer  
13 or other peace officer incurred in executing that order is a charge  
14 upon the county in which the court is situated.

15 SEC. 5. Section 706 of the Welfare and Institutions Code is  
16 amended to read:

17 706. After a finding that a minor is a person described in  
18 Section 601 or 602, the court shall hear evidence on the question  
19 of the proper disposition to be made of the minor. The court shall  
20 receive in evidence the social study of the minor made by the  
21 probation officer and any other relevant and material evidence that  
22 may be offered, including any written or oral statement offered by  
23 the victim, the parent or guardian of the victim if the victim is a  
24 minor, or if the victim has died or is incapacitated, the victim's  
25 next of kin, as authorized by subdivision (b) of Section 656.2. In  
26 addition, if the probation officer has recommended that the minor  
27 be transferred to the Department of Corrections and Rehabilitation,  
28 Division of Juvenile Facilities pursuant to an adjudication for an  
29 offense requiring him or her to register as a sex offender pursuant  
30 to Section 290.008 of the Penal Code, the SARATSO selected  
31 pursuant to subdivision (d) of Section 290.04 of the Penal Code  
32 shall be used to assess the minor, and the court shall receive that  
33 risk assessment score into evidence. In any judgment and order of  
34 disposition, the court shall state that the social study made by the  
35 probation officer has been read and that the social study and any  
36 statement has been considered by the court.